

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JOHN LENNON,
TIFFANY WEAVER,
KELLY LEMING,
BRANDI HUFFMAN,

Plaintiffs,

v.

**DECISION
and
ORDER**

19-CV-1541V(F)

ALLEGIANCE ACCOUNTING SERVICES, LLC,

Defendant.

APPEARANCES:

HILTON PARKER LLC
Attorneys for Plaintiffs
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PELTAN LAW, PLLC
Attorneys for Defendant
DAVID G. PELTAN, of Counsel
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In this action, pursuant to the Fair Debt Collection Practices Act, Plaintiffs, by papers filed September 18, 2020, moved to compel discovery, specifically, Defendant's response to Plaintiffs' document production demands and interrogatories served May 27, 2020 ("Plaintiffs' motion"). On June 16, 2020, Defendant requested an additional two-week period from June 26, 2020 to July 10, 2020, within which to respond to Plaintiffs' discovery requests, which request was granted by Plaintiffs on June 27, 2020 (Dkt. 20 at 2; Dkt. 20-2 at 1). On August 11, 2020, Defendant requested further information regarding the identity of Plaintiff Kelly Leming which Plaintiffs provided on the same date. Dkt. 20-1 ¶¶ 5-6. According to Plaintiffs, undisputed by Defendant, on

August 27, 2020, Plaintiffs inquired of Defendant whether Defendant's overdue responses to Plaintiffs' discovery requests would be forthcoming, Dkt. 20-1 ¶¶ 7-8, however, as a result of Defendant's response to Plaintiffs' inquiry and Defendant's failure to respond to Plaintiffs' requests, the instant motion followed.

Further, to date, Defendant has also failed to file any response to Plaintiffs' motion despite the court's direction (Dkt. 21) that Defendant do so by September 30, 2020. The oral argument on Plaintiffs' motion scheduled for October 13, 2020 was therefore cancelled.

It is well-established that a party's failure to timely respond to a request for discovery waives any potential objection to a request. See *Kloppel v. HomeDeliveryLink, Inc.*, 2020 WL 38895, at *5 (W.D.N.Y. Jan. 3, 2020) (citing *Swinton v. Livingston County*, 2016 WL 6248675 at *2 (W.D.N.Y. Oct. 26, 2016) (citing *Land Ocean Logistics, Inc. v. Aqua Gulf Corp.*, 181 F.R.D. 229, 237 (W.D.N.Y. 1998))). Further, a defendant's unexcused failure to respond to a motion to compel permits the court to deem the merits of the motion to be conceded. See *Alston v. Bellerose*, 2016 WL 554770, at *6 (D.Conn. Feb. 11, 2016) (noting defendants, by failing to respond in opposition to plaintiff's motion to compel discovery, provided no authority supporting any objection to discovery).

Moreover, unless a party's failure to provide discovery is substantially justified or an award of expenses would be unjust, the court is required to award the prevailing party its expenses, including reasonable attorneys fees, incurred in bringing a motion to compel pursuant to Fed.R.Civ.P. 37(a)(5)(A) ("Rule 37(a)(5)(A)"). Here, Defendant's failure to respond to Plaintiffs' discovery requests despite receiving an extension of time

within which to do so and Defendant's failure to respond to Plaintiffs' inquiry as to Defendant's intention to provide the requested discovery in order to avoid the need for Plaintiffs' motion demonstrates Defendant's unexplained and continued disregard for its discovery obligations in this case. Plaintiffs' motion should, accordingly, be GRANTED.

CONCLUSION

Based on the foregoing, Plaintiffs' motion (Dkt. 20) is GRANTED; Defendant shall produce the documents requested by Plaintiffs within 20 days of this Decision and Order. In accordance with Rule 37(a)(5)(A), Defendant shall show cause not later than October 30, 2020 why Plaintiffs' expenses of Plaintiffs' motion should not be awarded as required by Rule 37(a)(5)(A) to be paid by Defendant as the party resisting discovery or Defendant's attorney in advising Defendant to engage in such conduct, or both.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dates: October 20, 2020
Buffalo, New York